

Julio D. Alfonso  
Defendant.

- VS -

United States of America/  
Plaintiff

Case No 001162 CR MOORE

CLERK OF COURT  
MAY 30 9 39 AM '06  
U.S. DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

(Motion for New trial)

Now Comes the defendant Julio D. Alfonso, Pro se, and pursuant to F.R.C.P. (33), respectfully Moves this court for an order granting a new trial on the basis of newly discover evidence of a Constitutional Violation.

In Support thereof, defendant States:

1. On May. 03, 2001 defendant was found guilty on counts 1, 2, 3, 4, 5, 6 and 7. At the time of trial defendant was represented by Louis Gasuso.
2. Defendant Moves this Court for a new trial based on a "grave" Constitutional Violation
3. Defendant received information that before jury's verdict the court and the prosecutor communicated with the jury outside the presence of both defendant and his counsel.
4. Defendant informed his counsel of this error however, counsel failed to response thus this Motion is filed Pro se due to counsel ineffectiveness.

82  
TK

5. Pursuant to Rule 43(a) defendant presence is required at all proceedings and stages when the jury is present. This right is mandatory.<sup>1</sup> Such absence violates both the 5<sup>th</sup> and 6<sup>th</sup> Amendment rights under the U.S. Constitution.<sup>2</sup>

In this case, defendant did not voluntarily absence himself, he did not waive this right.<sup>3</sup>

Further defendant's attorney was also not present, thus denying defendant's right to effective counsel.<sup>4</sup>

Clearly, defendant's absence frustrated the fairness of the proceedings, prejudicing defendant by not being face to face with jurors.<sup>5</sup>

1. Illinois v. Allen 397 U.S. 357 (1970)

2. U.S. v. Bascaro 742 F.2d 1335, 1349 (11<sup>th</sup> Cir 1984)

3. U.S. v. Gagen 105 S.Ct 1482 (1985)

4. U.S. v. Cronin 104 S.Ct 2039 (1984)

5. Farett v. California 95 S.Ct 2525 (1975)

6. Lewis v. U.S. 13 S.Ct 136 (1892)

Moreover, When defendant was taken by the Marshall to the courtroom, the Marshall informed defendant that he had already been found guilty. Such further evidence coupled with not being present during this court's prosecutor communication with the jury is a clearly denial of constitutional rights and manifestly plain injustice.

Thus defendant requests a hearing to determine the effect of the magnitude constitutional error.

Respectfully Submitted  
Julio Alfonso

Julio D. Alfonso

#66753-0041

PO Box 619120

Miami FL 33101

Copy sent to:  
Kurt Sticher  
A.U.S. Attorney  
8245 N.W. 53<sup>rd</sup> St  
Suite 101

Miami FL 33166

this 23 day of 5 2001

(2)